

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Docket Number 042933/272474

**(filed with the Notice of Appeal)**

Application Number 10/784,450

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First Named Inventor Martin Zilliacus

Art Unit 2445

Examiner Ryan J. Jakovac

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

Respectfully submitted,



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## Attachment

### Reasons for Requesting Pre-Appeal Brief Request for Review

Claims 1-3, 6-19, 22-34, 36, 38-39, and 41-49 are pending. Claims 4-5, 20-21, 35, 37, 40, and 50-51 were previously canceled. The Office Action rejects Claims 1-3, 7, 9, 18, 22, 25-27, 36, 38-39, 44, 48, and 49 under 35 U.S.C. § 103(a) as being unpatentable over Microsoft Outlook 97 ("Outlook") in view of U.S. Pat. App. Pub. No. 2005/0114453 to Hardt ("Hardt"). Claims 10-17, 29, 30-34, 42, and 45-47 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Outlook in view of U.S. Pat. App. Pub. No. 2005/0149622 to Kirkland et al. ("Kirkland"). Claims 6, 8, 23-24, 28, 41, and 43 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Outlook and Hardt and further in view of U.S. Pat. No. 6,912,398 to Domnitz ("Domnitz"). In light of the subsequent remarks, Applicants respectfully submit that the rejections should be reversed and the pending claims are in condition for allowance.

### The Rejection of Independent Claims 1, 22, and 36 under §103(a) Should be Reversed

The Office Action posits that independent Claims 1, 22, and 36 are unpatentable over the combination of Outlook and Hardt. Independent Claims 1, 22, and 36 are directed to a method, apparatus, and computer program product, respectively. For example, a method according to amended independent Claim 1 includes directing receipt of a generic-recipient message by a network hub. The generic-recipient message comprises a message sent to a group or community address. The method additionally includes determining predefined attributes of the message. The predefined attributes comprise one or more of a sender of the message, subject of the message, or content of the message. The method also includes determining a type of communication medium of the message. The method further includes determining one or more recipients for the message based at least in part upon the determined type and further based at least in part upon the predefined attributes by comparing the predefined attributes of the message with stored information related to potential recipients. The method also includes directing dispatch of the message to the one or more determined recipients. Each of Claims 22 and 36 has its own unique scope, but recites features substantially similar to Claim 1 insofar as this discussion is concerned.

Applicants continue to respectfully traverse the assertion that Outlook discloses the feature of determining a type of communication medium of the message as recited by Claims 1, 22, and 36. In this regard, the received generic-recipient message may comprise one of several communication medium types, including, for example, a short message service (SMS) message, a multimedia message service (MMS) message, an electronic mail (email) message, or a voice message. *See, e.g.*, page 5, lines 3-5; page 13, lines 4-14; and FIG. 2 of the application. The type of communication medium of a received generic-recipient message may be determined and the message may be dispatched based at least in part upon the determined type. *See, e.g.*, page 4, line 26-page 5, line 7, which describes determining predefined attributes of a message including

a type and determining a recipient based on the predefined attribute (e.g., a type of communication medium ).

Accordingly, by the embodiments claimed in Claims 1, 22, and 36, a type of communication medium of a received generic-recipient message is determined and one or more recipients for the message are determined based at least in part upon the determined type. In contrast, Outlook, which the Office Action alleges teaches “determining a type of communication medium the message,” at most, discloses determining that an outgoing email message is a distribution group message. Accordingly, Outlook does not teach or suggest determining a type of communication medium of the received message. Indeed, such a determination would not be applicable to Outlook, which is a computer program for sending and receiving emails. Accordingly, determining a type of communication medium of a received message would not be applicable to Outlook.

Applicants note that in the Response to Arguments Section, the Examiner argues that “Outlook explicitly discloses that messages are determined to be email messages.” However, the cited portions of Outlook only discuss email messages, as Outlook is an email program. Indeed, the Examiner merely alleges “server determines message to be outgoing email. Message is determined to be a distribution group email message. (email) message is determined to be of an importance type.” Note: “(email)” added for purposes of this discussion and was not recited in the Office Action. Instead, Applicants reviewed the cited portion and noted that the alleged determination of an importance type of a message discussed email messages. Clearly, then since there is no other type of communication medium discussed in the cited portions of Outlook, Outlook does not teach or suggest determining a type of communication medium of a received message. In this regard, there is no need to determine a type of communication medium of a message sent or received with Outlook. Accordingly, contrary to the Examiner’s baseless assertions, Outlook does not teach or suggest determining a type of communication medium of a received message. Moreover, a person having ordinary skill in the art would not be motivated to modify Outlook to perform determining a type of communication medium of a received message because as an email program, it would be illogical to modify Outlook to determine a type of communication medium of a received message. None of the other cited references, taken alone or in combination with Outlook, cures the deficiencies of Outlook.

Further, as none of the cited references, taken alone or in combination, teach or suggest determining a type of communication medium of the received generic-recipient message, it consequently follows that none of the cited references, taken alone or in combination, teaches or suggests determining one or more recipients for the message based at least in part upon the determined type. In the Response to Arguments section, the Examiner alleges that “Outlook clearly discloses that based on the determined type (i.e. a group distribution message) the server determines recipients for the message.” Perhaps the Examiner has overlooked the fact that “the determined type” draws antecedent basis from the previously discussed feature of determining a type of communication medium of a received message. Even assuming *in arguendo* that a “group distribution message” is a “type” of a message, a group distribution message is not a type of communication medium of a received message, as recited by Claims 1, 22, and 36. Moreover, neither Hardt nor any other cited reference, whether taken alone or in

combination with Outlook teaches or suggests determining one or more recipients for the message based at least in part upon the determined type.

Applicants further continue to respectfully submit that Outlook does not teach or suggest directing receipt of a generic recipient message. As recited in Claims 1, 22, and 36, a generic-recipient message comprises a message sent to a group or community address. The Office Action alleges that the disclosure of personal distribution lists in Outlook teaches this feature of Claims 1, 22, and 36. However, it will be readily appreciated that a personal distribution list is merely a reference to a list of addresses. The personal distribution list does not comprise an address, as recited by Claims 1, 22, and 36. Accordingly, Outlook does not teach or suggest receipt of a generic-recipient message. Moreover, neither Hardt nor any other cited reference, whether taken alone or in combination with Outlook teaches or suggests directing receipt of a generic-recipient message.

In view of the foregoing, Applicants respectfully submit that Claims 1, 22, and 36 are patentably distinct from the cited references, taken alone or in combination, such that the rejection should be reversed. Applicants further respectfully submit that Claims 1, 22, and 36 are in condition for allowance.

#### The Rejection of Independent Claims 10, 29, and 45 under §103(a) Should Be REversed

The Office Action posits that independent Claims 10, 29, and 45 are unpatentable over the combination of Outlook and Kirkland. Independent Claims 10, 29, and 45 are directed to a method, apparatus, and computer program product, respectively. For example, a method according to Claim 10 includes directing receipt of a generic-recipient message. The generic-recipient message comprises a message sent to a group or community address. The method further includes determining predefined attributes of the message, wherein the predefined attributes comprise one or more of a sender of the message, subject of the message, or content of the message. The method also includes determining a type of communication medium of the message. The method additionally includes determining whether the message has priority based at least in part on the determined type and on the predefined attributes by comparing the predefined attributes of the message with pre-stored priority information. Each of Claims 29 and 45 has its own unique scope, but recites features substantially similar to the aforementioned features of Claim 10 insofar as this discussion is concerned. Although not included in Claims 29 and 45, Claim 10 additionally includes prioritizing the message when a determination is made that the message has priority.

Accordingly, independent Claims 10, 29, and 45 each recite determining a type of communication medium of the received generic-recipient message, similarly to Claims 1, 22 and 36. As discussed above, none of the cited references, taken alone or in combination, teach or suggest determining a type of communication medium of a received generic-recipient message as recited by independent Claims 10, 29, and 45.

Further, none of the other cited references, taken alone or in combination with Outlook teach or suggest determining whether the message has priority based at least in part on the determined type of communication medium in addition to the predefined attributes. Although it is unclear because the rejection of Claims 10, 29, and 45 does not address determining whether the message has priority based at least in part on the

determined type of communication medium, but rather merely addresses determination based at least in part on predefined attributes, it appears based on the Response to Arguments section that the Examiner believes the combination of Outlook and Kirkland teaches this feature. Regardless, Applicants note that the Office has failed to establish a *prima facie* rejection of Claims 10, 29, and 45 due to the failure to allege that the cited references teach each feature of Claims 10, 29, and 45.

Regardless, none of the cited references, taken alone or in combination, teach or suggest determining whether a message has priority based at least in part on the determined type of communication medium of the message. Applicants note that the Examiner in the Response to Arguments section discusses “prioritizing the communication medium” and alleges that “Outlook prioritizes email” and that “Kirkland also discloses prioritizing the message if a determination is made that the message has priority. Kirkland, in the abstract discloses that priority level of a message is determined according to the subject of the message and the messages is delivered and displayed to the recipient according to the priority level.” However, neither the referenced disclosure of Outlook nor the referenced disclosure of Kirkland, taken alone or in combination, teach or suggest determining whether a message has priority based at least in part on the determined type of communication medium of the message. In this regard, assuming *in arguendo* that the cited references teach that which the Office alleges, Outlook merely teaches prioritization of emails and Kirkland merely teaches prioritization of instant messages. Neither determines a type of communication medium of a message nor determines whether the message has priority based at least in part on the determined type of communication medium. Both Outlook and Kirkland are entirely focused on prioritizing messages falling within a single communication medium type.

Moreover, neither Kirkland nor Outlook discloses determining a priority of a generic-recipient message. As already discussed above, Outlook does not teach or suggest receipt of a generic-recipient message and therefore does not teach or suggest determining a priority of a generic-recipient message. Moreover, Kirkland relates at most to prioritization only of instant messages.

Moreover, none of the other cited references, taken alone or in combination, cure the deficiencies of the combination of Outlook and Kirkland. In view of the foregoing, Applicants respectfully submit that Claims 10, 29, and 45 are patentably distinct from the cited references, taken alone or in combination, such that the rejection should be reversed. Applicants further respectfully submit that Claims 10, 29, and 45 are in condition for allowance.

#### The Rejection of the Dependent Claims Should Be Reversed

Because each of dependent claims includes each of the recitations of a respective independent base claim, Applicants further submit that the dependent claims are patentably distinguishable from the cited references, taken alone or in combination, for at least those reasons discussed above and thus the rejections of the dependent claims should be reversed.

In addition, with respect to Claim 16, Applicants respectfully submit that none of the cited references, taken alone or in combination, teach or suggest prioritizing the communication medium used to dispatch the message. For example, in the claimed

embodiment, a generic-recipient message sent from a predefined sender or messages including predefined content, such as, voice communication, may be dispatched by a telephone call or voice mail (e.g., in lieu of by email, SMS, or other communication medium). *See, e.g.*, page 17, lines 11-16 of the present application. The Office Action alleges that “Outlook prioritizes email” and that “Kirkland also discloses prioritizing the message if a determination is made that the message has priority. Kirkland, in the abstract discloses that priority level of a message is determined according to the subject of the message and the messages is delivered and displayed to the recipient according to the priority level.” However, it will be appreciated that neither Kirkland nor Outlook provides more than one communication medium for dispatching a message (i.e. email only for Outlook and instant message only for Kirkland). Accordingly, neither Kirkland nor Outlook, taken alone or in combination teaches or suggests prioritizing the communication medium used to dispatch the message. Accordingly, Applicants submit that Claim 16 is patentably distinct from the cited references, taken alone or in combination. Therefore, the rejection of Claim 16 should be reversed and Claim 16 is in condition for allowance.